

## SUPREME COURT DECISIONS MADE

In Several Cases Which Are Appealed to It for Final Settlement.

CHARLESTON, Feb. 26.—The judgment of the circuit court of Tucker county, which was upheld in the action of a justice of the peace in assessing a fine against J. R. Harr, J. H. Harr and J. M. Harr, brothers, charged with an offense in digging potatoes Sunday, was reversed by the supreme court of appeals this week and the defendants were dismissed.

The defendants made the plea that their potatoes were freezing in the ground, and that to dig them was a work of necessity. The court held that the warrant in the case was invalid through the failure of the document to negative the exceptions in the statute—"Household or other work of necessity and charity."

The syllabi in this and four other cases handed down by the court are as follows:

State against Harr and others: "The warrant of a justice, accusing one of laboring on a Sabbath day, in violation of section 16, chapter 149, serial section 5321, code 1913, an offense of which the justice does not have jurisdiction, except to inquire into the fact of the offense and to hold the accused to answer upon a presentment or indictment of the grand jury, is not void for failure to negative the exceptions in the statute, household or other work of necessity or charity, and liable to be quashed. Section 219, chapter 50, serial section 2773, code 1913; Lacey vs. Palmer, 93 Va. 159; Harding's case, 105 Va. 585; Satterfield's case, 111 Mich. 461; People vs. Pichette, 111 Mich. 461.

But the rule is different where the warrant is for an offense of which the justice does not have jurisdiction to try and pronounce judgment, as the warrant then stands in the place of a presentment or indictment, and must charge the offense with the same particularity as in a presentment or indictment, and when the exceptions are contained in the enacting clause, and descriptive of the offense, the exception must be negated, so as to charge a complete offense under the statute. Twenty-two Ency. Pl. and Pract. 1084; Mayo's Guide, 606; Harris on Sunday laws, 265, section 302; state vs. Richards, 32 W. Va. 348, 356; Com. vs. Hill, 5 Cratt 682; Stockton vs. Morris, 39 W. Va. 443; 1 Am. Rul. cases, 785.

"Neither a justice, nor a circuit court on appeal, having jurisdiction, may try and pronounce judgment for an offense committed under said section 16, chapter 149, serial section 5321, code 1913. Such an offense is unlawful only upon the presentment or indictment of a grand jury. Const. W. Va. Art. 111, section 4; section 219; chapter 50, code 1913.

"When upon appeal from the judgment of conviction of the circuit court it appears that the offense charged is already barred by the statute of limitations, the judgment below should be reversed and the accused discharged from further prosecution. The commencement of a prosecution is the date of presentment or indictment. Commonwealth vs. Christian, 7 Gratt. 631; State vs. Beasley, 21 W. Va. 781; Boyle vs. Commonwealth, 14 Gratt. 574, note.

Jupikoff against Charleston National Bank, Kanawha county, reversed; judgment here, Mason, judge. The defendant bank adopted the following rules and regulations, applicable to its savings department:

"Deposits and the interest thereon may be withdrawn by the depositor in person or by written order; but in either case the pass book must be presented, that such payments may be entered therein. As officers of the bank may be unable to identify every depositor, the bank will not be responsible for loss sustained where a depositor has not given notice of his or her book being lost or stolen, if such book be paid in whole or part on presentation. In all cases a payment upon presentation of a deposit book shall be a discharge to the bank for the amount so paid.

"The amounts that may be due upon accounts shall be payable only to the depositor, his or her order or to his or her legal representatives, and in case of minors or married women, without regard to parents, guardians or husbands, as provided by law.

"Depositors, on signing the signature card thereby agree and assent to these rules and regulations which may be altered and amended at any time by the board of directors, and all such altered or amended rules shall be obligatory and binding on depositors after due notice of the same."

"These rules were assented to and signed by the plaintiff, who was a depositor. Held: That notwithstanding these rules and the contract relations created thereby, the bank is bound to exercise reasonable care in making payment so that payment shall be made to the person entitled to receive the money, and if the bank pay the money to the wrong person, without exercising reasonable care, this will not be a discharge to the bank against the depositor.

jury, and find documentary evidence, facts or circumstances, or some of these, which when considered with such conflicting oral evidence plainly constitute a decided weight and preponderance of evidence against the verdict.

"Where the circuit court sets aside a verdict of a jury on the ground that it is contrary to the law and the evidence, and it appears that the action of the court in setting aside the verdict was plainly wrong, this court will reverse such judgment and enter judgment in this court upon the verdict."

Lawrence, administrator, against Hyde, Preston county, reversed; judgment, new trial awarded; Poffenbarger, judge.

"Averments in a declaration against a master for damages for wrongful death of his servant, of a higher degree of duty on the part of the master to provide for the safety of the servant than the law imposes, do not vitiate it.

"For the purposes of a demurrer to such a declaration, the law itself raises the ordinary duties of the master to the servant, from allegation to the relation of the parties, and peculiar duties from allegation of the facts imposing them; wherefore, in neither case, is there necessity of express averment of the duty.

"Averment of matter in a declaration in tort, beyond what is necessary to give a right of action, by reason of the use of words too broad in meaning, or redundant phrases or clauses, is treated as surplusage.

"In a declaration for injury by negligence, it suffices to allege the facts from which the law imposes duty, an act or omission constituting in law a breach of the duty and the resultant injury.

"A witness interested adversely to the administrator, in the result of an action for damages for wrongful death, is incompetent to testify against the latter, in regard to a personal communication between himself and the person alleged to have been wrong fully killed.

"An opinion of a witness, founded upon a matter the evidence does not tend to establish, is not admissible as evidence.

"Expert opinion evidence concerning a matter as to which the jury are as competent to form an accurate opinion as the witness, is inadmissible.

"An instruction based upon an actionable matter neither pleaded nor proved, is erroneous.

"An instruction so general and indefinite in its terms as to involve submission of matter of law, to the jury, for determination, is erroneous."

State on behalf of First National Bank against Hamilton, sheriff, Mercer county; writ refused; Poffenbarger, judge.

"Section 8 of chapter 85 of the acts of 1915, authorizing boards of education and other fiscal tribunals to provide by special levies for payment of outstanding unpaid orders drawn previous to July 1, 1915, and saying such levies may be continued 'For as many years as may be necessary to pay off such debt and the interest that may accrue thereon' does not give or create any new right to interest on such orders. The provision for interest extends only to rights to interests based upon law outside of and beyond said act.

"School orders do not, in any case, bear interest. The provision of section 145, chapter 45, of the code, requiring endorsement of such orders, by the sheriff, on presentation thereof, does not make them bear interest against the issuing boards, after endorsement. It merely inflicts a penalty on the sheriff for non-payment on presentation."

State against Jones; Tucker county; judgment affirmed; Lynch, judge.

"Rulings of the trial court on the admissibility of evidence will not be considered on writ of error, unless the evidence admitted or rejected is made part of the record by special bills of exception or assigned as cause for a new trial on a motion therefor although all the evidence is made part of the record by a general bill of exceptions.

"An instruction, though correct in principle, is properly refused, where its subject matter is fully covered by other instructions given in the case."

ATLANTIC CITY, Feb. 26.—New Jersey would add \$200,000 to the value of its taxable property by getting rid of mosquitoes, Russell W. Giles, of Elizabeth, told the state mosquito extermination association at the Hotel Traymore.

The association, which held a two days' convention, also gathered these facts from a paper read by James E. Brooks, consulting engineer of the Essex county extermination commission:

"It is the adult female mosquito that stings, carrying poison and disease. The salt marsh varieties can migrate as far as forty miles. In salt marsh extermination the seemingly impossible feat of drainage by forcing water to run up hill has been accomplished."

"Pump, brothers, pump," was the gist of an exhortation by William Delaney, of Jersey City, commander of the mosquito fighting forces of Hudson county. Only by the use of pumps, said he, can salt marsh meadows be kept drained.

## BUCKHANNON HAPPENINGS CHRONICLED

Happenings of Upshur County Recorded by Sunday Telegram Correspondent.

BUCKHANNON, Feb. 26.—Mrs. William Cowles was at Clarksburg Tuesday.

L. B. Chidester was a Sunday visitor in Weston.

Dr. G. O. Brown, of Alexander, was in town Monday.

G. O. Young has returned from a business visit to Cincinnati.

C. W. Flesher, of Gasaway, spent Sunday here with his family.

Mr. and Mrs. Troy Harman, of Elkins, were Buckhannon visitors Tuesday.

Roscoe Wright, who is working at Alexander, spent Sunday here with his sister, Mrs. J. H. Sharps.

Mrs. R. Post, of Weston, is visiting her brother, W. C. Gum.

Charles Holt, of Elkins, was here this week visiting his parents, Mr. and Mrs. W. E. Holt, of Florida street.

Mercer Smith, of Pittsburg, is visiting his grandparents, Mr. and Mrs. W. P. Fowkes.

Mrs. Gus Hillery and child, of Gorman, Md., are visiting Mr. and Mrs. L. H. Trippett.

Paul Roberts, a former Wesleyan student, is here calling on friends.

Mrs. Benjamin Bassel returned to her home Monday after a visit with her sister, Mrs. Martha McCarty, of Clarksburg.

The stork visited the home of Mr. and Mrs. Fred Williams last week and left a bouncing boy.

Paul Foreman, a student of Carnegie Tech, is here visiting his parents.

Miss Ethel Snodgrass spent Sunday at Clarksburg visiting her sister, Miss Flossie, who is teaching school there.

Mrs. A. K. Watkins and Miss Minnie Morgan have returned from a trip to New York City, where they were buying their spring goods.

WEST UNION, Feb. 26.—Greenbrier and McClellan districts are preparing to vote on the bond issue for permanent road improvement. This makes six districts to make this movement and it is hoped the remaining districts will follow suit.

State Road Engineer Williams, of Morgantown, made speeches Saturday at West Union, Smithton and Central, on the good roads subjects. He will make arrangements to speak in the other districts soon.

Plans are being made by which West Union will have an up-to-date fire department.

Charles Hardesty, of Central, and Miss Orpha Shinn, of Arnold's creek, were married recently at the Methodist Episcopal parsonage, by the Rev. Mr. Bleakley.

Mrs. Joseph McConnell and daughter, Miss Ruth, of Clarksburg, are guests of relatives at Smithton.

The masquerade at the skating rink Friday evening, February 18, was a decided success.

Gregory Bleakley, Jr., son of the Rev. and Mrs. Bleakley, has entered the Ohio Military Institute at Cincinnati.

R. M. Graham, of Marshville, was a recent visitor.

T. E. Mobley, general superintendent for the Carter Oil Company, was here recently.

L. L. Sadler, county superintendent of schools, is attending the National Conference at Detroit, Mich.

Albert Adams was removed to the Kessler hospital at Clarksburg, where he will take treatment for blood poison.

Some brick fell from the clock tower of the court house last week, causing some slight damage to the roof.

The Cox Brothers Company have purchased the hardware store of Smith and Smith.

B. F. Bauman, of Shirley, has gone to Oklahoma where he will be employed in the oil fields.

Nine of the young ladies have formed an organization known as the G. G. C. Club. The charter members are as follows: Misses Mayme, Del-

## Babes Fed Worse Than Pigs! So Says Dr. Harvey W. Wiley

Newlyweds Should Know Their Jobs Better, Declares Noted Pure Food Expert.

WASHINGTON, Feb. 26.—"We have been teaching the principles of pig feeding for fifty years; there are 5,000 educated young men in this country who understand feeding pigs—but not fifty who understand feeding babies."

That's what Dr. Harvey W. Wiley, famous pure food expert, former chief of the United States Bureau of Chemistry, has just declared:

Instead of answering questions as to age, color and previous condition of marital servitude, Wiley said candidates for matrimony should be put through a stiff examination in nutrition, sanitation and ventilation.

Dr. Wiley is not only an expert on these matters, but is married and is the father of the famous "pure food baby."

"The best kind of preparedness," says Wiley, "would be preparedness by which our people would learn to take care of the human resources they have."

"When I went to get a marriage license did they ask if I knew anything about the duties of a head of a family? No! They asked, 'How old are you?' then said, 'One dollar please.'"

"I believe candidates for matrimony should be refused certificates if they know nothing of the duties of a mother and father, proper food for a baby and how to keep the baby clean."

"Persons ignorant of these principles have no right to bring children into the world."

"With this examination," continued the doctor, "the slaughter of innocents that now goes on at the rate of 137 for every 1,000 born who die before they reach the age of one year, would cease. We could stop that slaughter, which is more in a year than all the carnage of the European war in a year."

"Whose fault is it that people are not instructed on these things?" I asked.

"It is the fault of our educational system. People are not taught except by sad experience. Until recently there have been no schools teaching hygiene, sanitation and the care of the home. Now, a number of medical schools are teaching physicians something of nutrition for the first time."

"There are a number of schools, too, teaching domestic science—man feeding."

"People don't understand that it is cheaper to feed a child right than to feed it wrong."

"You put cent cents for a quart of unskimmed milk, feed it to baby, and baby gets summer complaint, and either dies, and you pay the undertaker a bill, or gets well after you have paid the doctor a bill. Whereas, if you had paid twelve to fifteen cents for the half the quantity of milk but bought milk from cows certified free from tuberculosis and rich in butter fat, you would have got more than twice as much food value in half the quantity, the child would live and you would save all the expenses of doctor or undertaker, to say nothing of the misery."

"A great number of the cheapest foods for children are best. A child needs whole cereals—whole wheat and whole corn—the cheapest food which the country affords."

"What an ignorant father or mother spends buying the child cake, sugar, ice cream and candy would more than make up the difference in buying wholesome food."

"As to ventilation—pure air, and plenty of it. That's all, but so few know about it."

NOTED U. S. FUGITIVE KILLED IN MEXICO

"Guy Johnson" Was Hartman, Wealthy Distiller, Indicted in Big Frauds.

EL PASO, Tex., Feb. 26.—"Guy Johnson," American ranch hand murdered recently in Chihuahua by Mexican bandits, was in reality Guy L. Hartman, a wealthy distiller of North Carolina, sought by the United States government as head of a conspiracy to defraud the government of liquor revenues amounting to hundreds of thousands of dollars, United States officials here have learned.

Hartman had been working on a ranch owned by W. H. Acklin near Tejococac, Chihuahua. Leaving the ranch he was waylaid by bandits on December 26 at Basasac and was killed after he had himself killed five assailants. It is now declared here that Hartman, believing his location in Mexico had become known, was en route, when attacked, to Sonora, where he expected to find a new place of greater security.

According to the information available the government's disclosures last summer of internal revenue frauds in the South caused Hartman to flee to Mexico and resulted in the indictment and prosecution of a group of southern distillers and the suicide of Knox Booth, an internal revenue official, at Nashville last July. Hartman in his escape abandoned a cash bond of \$20,000.

Last October, Fey Chew, a special attorney of the department of justice, and John L. Caspar, one of the distillers now serving sentence in Leavenworth prison, were on their way to Tejococac to see Hartman, and it is said, offer him immunity if he would testify against other alleged conspirators. But in view of the exodus of Americans from Chihuahua then in progress, they turned back at Chihuahua city, and the interview did not occur.

Kenneth Smith has returned to Bethany College after a few days at home.

The Baltimore and Ohio has made some much needed improvements at the depot by putting up several outside lights.

## COUPLE CHARGED WITH WHITE SLAVERY

Man and Woman Held for Federal Court under a Very Heavy Bond.

GRAFTON, Feb. 26.—Stephen Palmanis and Mrs. Nazlati Pamanis, arrested at Cheat Haven, Pa., and brought here for trial upon a white slave charge, were held for the federal court in Wheeling under heavy bond. Palmanis is charged with having taken Mrs. Pamanis from Century, to Point Pleasant and then to Cheat Haven several months ago and they were arrested there only after some difficulty.

The entire town of Pruntytown, three miles from Grafton, where are located the buildings of the West Virginia Industrial School for Boys, was threatened one night this week when flames swept the homes of Grant Sinsal and Charles Tucker. The Sinsal family escaped from the building only in scant clothing and one member of the family was burned before she could leave the building. The Grafton fire department furnished aid.

W. P. Blackwood delivered an illustrated lecture Friday at the court house on the subject of the construction and maintenance of good roads. The efforts to educate the people to the value of better roads is preliminary to putting on a bond issue here to build good roads throughout the county, but it will probably be a year or two before the bond issue is brought up.

After several days work, the report of the grand jury was received with indictments against John T. McGraw and Charles R. Durbin in connection with the Grafton Bank trouble but no disposition has not been made of the case against McGraw, who is charged with being an accessory before the fact in causing Durbin to violate the banking laws in a specific instance, and is not connected with the majority of the cases. After having several dilatory pleas overruled by the court, a change of venue was asked Thursday by Mr. Durbin on the grounds that he could not secure a fair and impartial trial in this county. Judge Neil J. Fortney granted the plea but has not announced to what court the case will be sent.

The meeting of the Republican county committee was held here Saturday afternoon for the purpose of appointing the registrars for the coming election. Marcellus Compton was recently elected district committeeman to succeed Hugh Marquess, deceased.

The badly decomposed body of a female child, found beside a shallow grave from which it had been dug by wild animals near Simpson, this county, has so far furnished an unsolvable mystery for county authorities. A cord was tied tightly round the child's neck, and it had evidently been strangled to death.

Senator Sam B. Montgomery, of Kingwood, grand keeper of the records and seal of the Knights of Pythias of West Virginia, gave an address on Pythian duty at the big banquet of the Maryland Pythians at Cumberland a few nights ago.

Mildred Irene, the three-year-old daughter of Mrs. E. Kinney, of Onea street, was seriously burned when its clothing caught from an open stove. Though the child will likely recover, its condition is quite serious.

E. V. Miller, a fireman in the local yards of the Baltimore and Ohio railroad, was injured this week when two yard engines sideswiped while crossing over a switch. A limb was broken and he was otherwise injured.

The appointment of road overseers for the county was the biggest job before the county court at its monthly meeting here this week. Every overseer of a road in the county was changed, this being the first shakeup of this sort in years. Much money will be spent upon the roads of the county during the coming year.

Grafton has been made the terminal for all Baltimore and Ohio trains on the line between Grafton and Parkersburg, which will mean that a large number of families will be required to move from Parkersburg to Grafton in order to be able to keep up with the new change in the terminal points.

MODERN EFFICIENCY METHODS ARE NEEDED

KANSAS CITY, Feb. 26.—Why should a man without a left eye be barred from the military service? That is what Fred Kuemmling, Joplin, Mo., wanted to know when he was rejected for enlistment in the United States Marine Corps at its Kansas City recruiting station.

"I don't see why you won't take me," said Kuemmling. "Don't you have to scout or close the left eye when you shoot? I wouldn't have to waste any motion doing that because I haven't got any. You need modern efficiency methods in your service, I can see that."

Gambria, West Africa, has 146,19 population.

## Announcement

We wish to announce that after March 1st, we will be located in the plant formerly occupied by the Swager Ice Cream Co., Hewes street, opposite the Fire Department. Owing to the tremendous growth of our business we were compelled to get into larger quarters to be able to take care of our ever growing business. We have taken over the Cold Storage Plant and Refrigerating System of the Swager Ice Cream Co., and will now be in a position to furnish our customers with the best Milk, Cream, Butter and Buttermilk in the city. We would be glad to have you call and see our plant, which when completed, will be the best and most sanitary in the city, as well as have your order for Milk, Cream, Butter and Buttermilk, which we assure you will be the best you ever tried, as we are bottling milk from such herds as Gore Brothers' thoroughbred Jerseys and J. D. Bassell & Son's all thoroughbred Jerseys. Call in or phone us now.

## Model Dairy Company

## GLASS OPERATIONS BRIEFLY REVIEWED

In Current Issue of the Glassworker, a Pittsburg Official Trade Journal.

PITTSBURGH, Feb. 26.—Briefly reviewed as follows are window glass operations by the Glassworker in its current issue:

The new plant of the Clarksburg Glass Company, constructed of steel, is operating full capacity, producing a large quantity of nice quality glass.

News of a new glass company being promoted at Tarpon Springs, Fla., has just filtered through.

The Michigan Glass Company, of Saginaw, Mich., is running its plant full and intends putting on a night shift in the mold shop.

Fire which occurred in the plant of the T. C. Wheaton Company, Millville, N. J., Saturday night, did damage to the amount of \$25,000.

Both plants of the Cambridge Glass Company, Cambridge, O., are operating nicely, every thing pointing to a steady run until the summer stop.

The Tuna Glass Company, of Clarksburg, W. Va., is operating its plant full capacity, making a large production. Eight Consolidated machines are in use.

Steps are under way to organize a central labor body in Morgantown, W. Va. Eleven glassworkers' locals are said to have signified a desire to be affiliated.

Both tanks at the Travis Glass Company plant, Clarksburg, W. Va., are in commission and a good production is reported.

The Norwood Glass Company, Clarksburg, W. Va., has its plant in full operation. Thirty-six shops are at work.

A new hand window plant, of thirty-six blower capacity, has been organized and is to be located in Clarksburg.

Plant No. 2 of the Pittsburg Plate Glass Company at Tarentum, Pa., is expected to be placed in operation early in the summer.

Window glass workers of the Clarksburg, W. Va., district have unanimous-

ly endorsed the woman's suffrage movement.

The tank at the Essex Glass Company, Parkersburg, W. Va., broke February 12, for the third time this season. Fires will be turned off March 18.

The directors and officers of the Pittsburg Plate Glass Company were re-elected at the annual meeting of the company held in Pittsburg last Wednesday.

The Travis Glass Company's factory at Weston, W. Va., is operating full capacity, with three one-man machines on three shifts.

The Penn Window Glass Company, Pennsboro, W. Va., had to close down February 15 for lack of gas fuel, being closed the balance of the week.

The southwestern manufacturers held a meeting in Muskogee, Okla., last Thursday, guarantees being considered and condemned.

The manufacturers wage committee last week recommended that an advance of seven and one-half per cent on the hand plant window glass scale be given, the raise to take effect March 15.

Directors of the Owens Bottle Machine Company have decided, it is said, to increase the common stock to \$30,000,000 and the preferred stock to \$20,000,000. The stock is to be listed on the New York Exchange.

Rings, floaters and blocks have been set at the plant of the Masontown Glass Company, Masontown, Pa., operations being resumed February 14. An unusually fine quality of glass is now reported.

The only completed railroad in Ecuador is that between Guayaquil and Quito. A branch of this road, to extend 190 miles from Curaray to Ambato, is now under construction.

Cancer has been traced to roaches by a Danish scientist, who has succeeded in producing the disease in rats by feeding them with eggs of par-



The mayor of Richmond, Virginia selected a Milton "Invisible" Player during the Piano Exhibit held in that city, when the Player Pianos of almost every manufacturer in the country were exhibited.

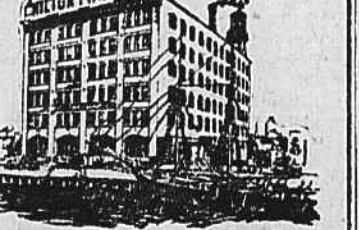
Gentlemen: During the recent convention of piano manufacturers and dealers in this city, at which pianos from almost every manufacturer in the country were on exhibition, the Milton Player Piano soon attracted my attention, and after an examination my wife obtained one. The Player Piano has now been

in my home for some time and I can scarcely express to you the great pleasure it has given to every member of my family. It is so simple in its construction that a small child can play it, and produce not only familiar airs, but the grandest strains of the world's greatest composers.

Wishing you continued success, I am  
Yours very respectfully,  
D. C. RICHARDSON.

There are over 80,000 Milton Pianos and Player Pianos in daily use in this and other countries showing absolutely that it is an instrument of merit and extremely popular both in quality and price.

While the Milton Piano is far from being a new make on the market we believe it is comparatively new in this territory and we have made extensive arrangements with the Milton factory for a large number of their Pianos and Players at a great saving to ourselves owing to the large order and we are now offering you these wonderful instruments at a great saving during our introductory sale and request that you come in and examine these instruments and compare them with any others that sell elsewhere for \$100.00 or more above our Sale Price.



**Davis, Burkham & Tyler Co.**  
MASONIC TEMPLE

MASONIC TEMPLE. CLARKSBURG, W. VA.